

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2836 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 & 2: Yes and 3 to 5 No.

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KARSHANBHAI VASTABHAI BHASKER

Versus

STATE OF GUJARAT

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Appearance:

MR IS SUPEHIA for Petitioner

MRS SIDHDHI TALATI,AGP, WITH MR HASURKAR, Govt  
Solicitor for Respondent No. 1, 2.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/08/98

ORAL JUDGEMENT

Rule. Mrs. Sidhdhi Talati, Aswsistant Government  
Pleader waives service of the Rule on behalf of the  
respondents. At the request of the learned Advocates,  
this petition is taken up for final hearing to-day.

The petitioner, who joined the services of the

respondent No.2 as Daily Wager Labourer on 1-11-1960 and retired on 31-12-1996 on reaching the age of superannuation, has by this petition claimed pension and gratuity as per law from 1-1-1997 with 18% interest. It is the case of the petitioner that although he has worked as Daily Wager upto 27-1-1987 and thereafter as Work-charge Labourer upto the date of superannuation, he has not been paid the amount of pensionary benefits. He has placed reliance on the Government Resolution No.WCE/1588/(5)/(2)/G.2 dated 17th October, 1988 which, inter alia, provides that if a daily wager has put in more than ten years service as on 1-10-1988, he shall be entitled to pension, gratuity etc.

N.C.Mehta, Executive Engineer-respondent No.2 has filed affidavit in reply on 29-6-98. In the said reply affidavit, it is, inter alia, pointed out that the contention that the petitioner is working since 1-11-60 as Rojanddar is untrue. It is further stated that there is nothing on record of the administration which supports the contentions. As per the record, the petitioner came to be appointed as workcharge male labour w.e.f. 12-1-87 from the daily rated casual persons and as such services for all the purposes can be counted for consideration for terminal benefits from the date of appointment in temporary establishment of Government of Gujarat. It is further stated that the petitioner has rendered services in workcharge establishment for a period of 9 years, 11 months and 4 days and as per the norms settled by the Government, the petitioner has not rendered minimum pensionable services i.e. 10 years, and that the petitioner attained the age of superannuation on 11-12-96 and accordingly came to be relieved on 31-12-96. In paragraph 5 of the said affidavit, it is further stated that the petitioner has not rendered qualifying services for pension purposes and therefore the petitioner is not entitled for pensionary benefits, and that the Government has made clarification to the effect that the working as and when required on daily rated basis and period spent during that period cannot be counted for pensionary benefits and in that view of the matter and norms fixed by the Government, the petitioner is not entitled for the pensionary benefits.

Reading the said affidavit, it is clear that the factum of work of the petitioner as daily rated employee with effect from 1-11-60 is denied on the ground that the respondent No.2 has no record of the administration. However, it is clear as per the admission made by the deponent of the affidavit that the petitioner came to be appointed as a workcharge male labourer with effect from

12-1-1987 from the daily rated casual persons meaning thereby prior to 12-1-1987, the petitioner was working as a daily rated casual person. The petitioner in the affidavit in rejoinder has produced a chart in order to show that he had worked from February, 1979 as a daily wagger upto 1986. Not only that, the petitioner has also produced a copy of the letter dated 12-3-1984 written by the Section Officer (R&B) to the Deputy Executive Engineer (R&B) Upleta wherein it was conveyed that the petitioner has worked as a daily wagger for more than five years as on that date. This letter was accompanied by the statement showing the number of days worked by the petitioner i.e. 1750. In view of this documentary evidence on record, it is clear that the petitioner has worked as a Daily wagger since 1979 till 1987 when he became workcharge labourer. Mr. Suphia, learned Advocate for the petitioner, has, however, fairly restricted the claim of the petitioner from 1979 instead of 1-11-60.

The next question that arises for consideration is whether the period of work put in by the petitioner as a waily wagger i.e. from 1979 till 1987 should be taken into consideration for the purpose of pensionary benefits. The petitioner has placed reliance on the Government Resolution dated 11-10-88. However, except making statement in the affidavit in reply that the Government has made clarification to the effect that "...the working as and when required on daily rated basis and period spent during that period cannot be counted for pensionary benefits.." the deponent has not produced any other material to substantiate the said statement.

A Division Bench of this Court (Coram: Hon'ble C.J. and J.M.Panchal,J) in the case of Chhaganbhai Ranchhodbhai Rathod vs Dy Executive Engineer & ors, Letters Patent Appeal No. 1495 of 1997 decided on 6-8-98, after considering the resolution dated 17th October, 1988 in an identical situation has held that the appellant in that case who completed 240 days and was continuously in service for a period of more than ten years as Rojamdhar is entitled to the benefits of pension.

Mrs.Siddhi Talati, learned Assistant Government Pleader instructed by Mr. Hasurkar, learned Government Solicitor has, however, invited my attention to Rule 230 of the Bombay Civil Services Rules and submitted that since the petitioner was not holding substantitive permanent post before 1987, he is not entitled to pensionary benefits. In her submission the services of Rojamdhar are not required to be taken into consideration

for the purposes of counting the period of service for pensionary and other benefits. In view of the decision of the Division Bench of this Court in Chhaganbhai Ranchhodbhai's case (supra) it is not possible to accept the submission of Mrs. Talati. In Tribhovanbhai Jerambhai vs Dy Executive Engineer, Sub-Division, R&B Deptt and another, 1998 (2) G.L.H. page 1, this Court, after considering Rule 230 of the BCSR has ruled that Rule 248 of the Bombay Civil Services Rules provides that Government may, by general or special order, permit service other than pensionable service for performing which a government servant is paid from State revenue or from local fund to be treated as a duty counting for pension. In issuing such order the Government is to specify the method at which the amount of duty shall be calculated and may impose any condition which it thinks fit. Thus Government has necessary power to provide for pension even in cases where service other than pensionable service may become eligible for grant of pension. It is further ruled that in the resolution dated 17-10-1988, it has been envisaged that those workmen who, as on 1-10-1988 or thereafter complete ten years of continuous service to be counted in accordance with provisions of S.25B of the ID Act shall be deemed to be permanent. Under the resolution dated 17th October, 1988 his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularisation is taken into consideration for the purpose of computing pension or making pension available to such retired employee. In view of this, it is clear beyond any manner of doubt that the services of the petitioner as a daily rated employee, if not from the year 1960, at least from the year 1979, is required to be taken into consideration until, he retired for the purposes of computing pensionary benefits.

In the result, this petition is allowed. The respondents are directed to calculate the pensionary benefits payable to the petitioner within two months from today and to pay the arrears within one month thereafter. It is clarified that if the amount is not paid by the respondents within the time stipulated hereinabove, the same shall be paid to the petitioner with 12% from the date of expiry of one month of the calculation till the date of payment. Rule is made absolute accordingly with no order as to costs.

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